

### REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1, 2, 4, 6, 12, 13, 15, 17, 23, 29, 30, 37, 38, 43 and 45 have been amended. The amendments to the claims are supported by at least Figures 2-6 of the present application. No new matter has been added.

#### Interview Summary

An in-person interview was conducted between Applicant's representative Rob Kalinsky (Reg. No. 50,471) and Examiner Jules on August 10, 2004. The parties discussed the Pyper reference and the claim limitations related to adjustment about a vertical axis. The Examiner suggested that requiring that the blower to be positioned about the vertical axis should overcome Pyper. No formal claim language was agreed upon. The parties also discussed the motivation to combine the Harrison and Quigley references.

#### § 102 Rejection

Claims 1-3, 5, 7, 11-14, 16, 18, 22, 23, 25, 28, 29, 31, 32, 36, 37, 39, 40, 43, 45, and 46 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Pyper, U.S. 1,382,229. Applicant respectfully traverses this rejection.

Pyper discloses a display device having a disk 20 that is rotatable about a horizontal axis. Vanes 31 are secured to a periphery of the disk 20. Moving air provided by a fan 29 engages the vanes 31 thereby rotating the disk 20 about the horizontal axis. Although Pyper discloses that the fan 29 may be positioned along the side, top or bottom walls to provide moving air in a direction perpendicular to the axis of rotation of the disk 29, Pyper fails to disclose positioning the fan 29 along the axis of rotation of the disk 20 to provide moving air parallel to the axis of rotation. Therefore, Pyper fails to disclose "a moving member defining a plurality of blades, the moving member being coupled to the flame element and . . . being adjustable about a vertical axis to move the flame element; and a blower positioned about the vertical axis and configured to provide moving air the adjust the moving member," as required by claim 1. Pyper also fails to disclose "a blower configured to provide moving air along the vertical axis of rotation of the moving member," as required by claim 12, or "wherein the blower is positioned along the vertical axis of rotation," as required by claim 23, or "a blower configured to blow air along the

vertical axis, wherein the moving air engages the moving member," as required by claim 29, or "positioning the blower along the vertical axis," as required by claims 37 and 43. Therefore, Pyper fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them.

### §103 Rejections

Claims 1-3, 7, 8, 12-14, 18, 19, 23, 25, 26, 28, 29, 31-33, 37, 39-41, 43 and 45-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harrison, US 6,461,011 in view of Quigley, US 1,945,072. Applicant respectfully traverses this rejection.

Harrison discloses a flame simulating device that includes a housing 12, an elongate flame-shaped piece of collapsible material 14, a lamp 16 for illuminating the material 14, a fan 18, and an inner housing 20. The material 14 is viewable through any of the panels of the housing 12 (see col. 3, lines 44-48 of Harrison). The material 14 maintains a fixed position attached to the top of inner housing 20. Moving air from the fan 18 causes the material 14 to maintain a generally upright position.

Quigley discloses a display apparatus that includes a box 2 that supports a small table 7 and article 8. A motor 23 rotates a worm 22 that engages a worm wheel 21 that rotates a vertical shaft 20 that has a pinion 19 coupled to an end thereof. The pinion contacts a gear 18 that is coupled in a non-concentric way to the table 7 (see Figure 5 of Quigley). Thus, the central axis of the table 7 is not concentric with the worm 22 or the shaft 20, and rotation of shaft 20 causes the table to both rotate and move towards and away from the panels 4-6.

Neither Harrison, Quigley, nor a combination of these references discloses or suggests "a blower positioned about the vertical axis and configured to provide moving air that adjusts the moving member about the vertical axis and alters a position of the flame element," as required by claim 1, or "a moving member defining a plurality of blades, the moving member including a vertical axis of rotation that is concentric with the flame element vertical axis of rotation, . . . and a blower configured to provide moving air," as required by claim 12, or "a blower . . . ; and a mechanical device coupled to the flame element that concentrically rotates the flame element about a vertical axis of rotation of the mechanical device," as required by claim 23.

Harrison and Quigley also fail to disclose or suggest "a moving member . . . coupled to the flame element . . . ; and a blower configured to blow air . . . , wherein the blown air engages

the moving member to alter the position of the flame element," as required by claim 29, or "moving the flame element with an air flow provided by the blower by contacting the flame element and at least one fan blade with the air flow from the blower to move the flame element about the vertical axis," as required by claim 37. Harrison and Quigley fail to disclose or suggest both a fan blade and a separate blower for moving a flame element. Harrison and Quigley also fail to disclose or suggest a moving member that rotates concentrically with the flame element axis of rotation.

Harrison and Quigley further fail to disclose or suggest "disposing the flame element viewable to the observer within the chamber through only one of the plurality of enclosure panels," as required by claim 43. Quigley does not disclose a chamber. As noted above, the member 14 disclosed by Harrison is viewable through multiple panels of the enclosure 12.

In view of the above, Applicant submits that Harrison and Quigley fail to disclose or suggest every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them.

Claims 9, 20, 27, 34, 42 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harrison in view of Quigley and further in view of Butterfield, US 4,965,707. Applicant respectfully traverses this rejection.

As discussed above, Harrison and Quigley fail to disclose or suggest every limitation of claims 1, 12, 23, 29, 37 and 43. Butterfield fails to remedy the deficiencies of Harrison and Quigley as they relate to claims 1, 12, 23, 29, 37 and 43. Therefore, claims 9, 20, 27, 34, 42 and 48 are allowable for at least the reason they are dependent on an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 10, 21 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pyper in view of Hecker, U.S. 5,426,879. Applicant respectfully traverses this rejection.

As discussed above, Pyper fails to disclose every limitation of claims 1, 12 and 29. Hecker fails to remedy the deficiencies of Pyper as it relates to claims 1, 12 and 29. Therefore, claims 10, 21 and 35 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Summary

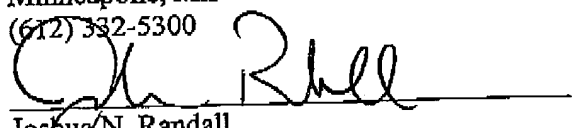
In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the application in the form of a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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